

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**BEVERLY ENTERPRISES - TENNESSEE, INC.,
d/b/a AMERICAN TRANSITIONAL REHAB.
AND SPECIALTY CARE**

Employer¹

and

Case 26-RD-1013

MARILYN BROWN

Petitioner

and

**UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL 1529**

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:³

INCLUDED: All full-time and part-time service and maintenance employees employed by the Employer at its Memphis, Tennessee facility, including nurses aides, physical therapy aides, resident assistants, restorative aides and routine aides, housekeeping employees, dietary employees and laundry employees.

EXCLUDED: All temporary and casual employees, licensed practical nurses, registered nurses, office clerical employees, guards and supervisors, as defined in the Act.⁴

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date

and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, Local 1529.⁵

LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. ***Excelsior Underwear***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Co.***, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the ***full*** names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. ***North Macon Health Care Facility***, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Memphis Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104-3627, on or before **May 17, 1999**.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **May 24, 1999**.

DATED May 10, 1999 at Memphis, TN.

Gerard P. Fleischut, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

¹ The name of the Employer appears as amended at the hearing.

² The Employer and the Intervenor have filed briefs which have been duly considered.

³ Beverly Enterprises - Tennessee, Inc., d/b/a American Transitional Rehab. and Specialty Care (hereinafter "the Employer") is a California corporation engaged in the operation of a skilled nursing facility located in Memphis, Tennessee.

On March 26, 1999, Marilyn Brown, an individual (hereinafter "the Petitioner") filed a decertification petition seeking an election in a unit of employees represented by the United Food and Commercial Workers Union Local 1529 (hereinafter "the Union"). The sole issue raised at the hearing was whether the contract-bar doctrine is applicable in the instant case.

A collective-bargaining agreement between the Employer and the Union was in effect from July 24, 1996 through July 24, 1998. The parties began negotiating a new agreement on June 11, 1998. Thereafter, on July 22, the parties executed an agreement which temporarily extended the terms of the 1996 agreement pending the parties' continued negotiations. This temporary extension agreement was terminable by either party upon 48 hours written notice.

On December 17, 1998, the parties reached an agreement that was submitted to the membership for ratification. The employees rejected that agreement and the parties resumed negotiations on February 10, 1999. At this meeting the parties negotiated a new agreement. This second agreement was ratified by the membership on February 15, 1999.

It is undisputed that following the ratification, Teresa Craven, the Union representative, advised the Employer's Executive Director, Rob Rollans, of the contract ratification. The Union contends that following the ratification of the second agreement the Employer implemented the terms of the new contract. Craven, a Union representative, testified that within a week of the ratification, she gave the Director of Nursing, Kim Buckley, a copy of the ratified provisions of the new contract. Buckley, however, was not a member of the Employer's bargaining committee and did not testify at the hearing. Rollans testified that he never saw a copy of the package presented to the membership at the second ratification prior to April 7, 1999, when he received a copy of the new contract to review from the Union.

In order for an agreement to serve as a bar to an election, the contract bar doctrine requires that certain requirements be satisfied. There must be a written agreement which sets forth the substantial terms and conditions of employment

that is signed by the parties prior to the filing of the petition that it would bar. See, Appalachian Shale Products, 121 NLRB 1160, 1162 (1958).

The Union argues that the sum total of the following documents establish that the decertification petition should be barred in the instant case: the 1996-1998 collective-bargaining agreement, the July 22, 1998 temporary extension agreement, the parties' bargaining notes, the contract summaries prepared by the Union for the ratification votes, and the 1998-2000 draft collective bargaining agreement.

The Employer argues that there is no document signed by the parties prior to the filing of the petition that is reflective of the parties' full agreement. In support of its contention, the Employer relies on Seton Medical Center, 317 NLRB 87 (1995). In Seton, the Board held the contract bar doctrine to be applicable notwithstanding that the parties understood that they had a final and binding contract and that the Employer had implemented the agreement. The Board found that while the initialing of several tentative agreements adequately demonstrated the parties' assent to those provisions, there existed no signed document which identified the totality of the parties' agreement and showed that their contract negotiations were concluded.

I conclude that Seton Medical Center is controlling in the instant case. The Union cannot point to any written document signed by the parties prior to March 26, 1999, the date the petition was filed, that embodies the agreement reached in February 1999. I also find that the parties temporary extension agreement is too indefinite to bar the petition. See, Crompton Company, 260 NLRB 417 (1982).

There are 83 employees in the bargaining unit.

⁴ The unit description appears as amended at the hearing.

⁵ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a Request for Review is filed, unless the Board expressly directs otherwise.

CLASSIFICATION INDEX

4040-1760-7500

4040-1720-5000

4040-1745

